

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**JESSE BREWER,**

**Plaintiff**

**v.**

**DONALD E. HOPPLE, JR., *et al.*,**

**Defendants**

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**CIVIL NO. 1:15-CV-0942**

**(Judge Rambo)**

**(Magistrate Judge Carlson)**

**MEMORANDUM**

Before the court is a May 18, 2015, report and recommendation of the magistrate judge (Doc. 5) to whom this matter was referred in which he recommends that Plaintiff Jesse Brewer's *pro se* civil rights complaint be dismissed. Plaintiff Brewer has filed objections to the report and recommendation. For the reasons set forth below, the report and recommendation will be adopted and the complaint will be dismissed.

Brewer was indicted in the United States District Court for the Middle District of Pennsylvania along with two other co-defendants for an armed robbery (*see* docket number 1:13-CR-013, assigned to Judge Caldwell). The evidence amassed against Brewer includes cellular telephone records obtained by police through search warrants served upon cellular telephone service providers. A motion to suppress was filed by Brewer in his criminal case alleging that this seized evidence was a violation of his Fourth Amendment rights. On May 12, 2015, Judge Caldwell denied Brewer's motion to suppress. (No. 1:13-CR-013, Doc. 179-180.)

In his civil rights complaint before this court, Brewer alleges that the affidavits of probable cause were deficient, the warrants were over broad, and the searches were unreasonable. (Doc. 1, Statement of Claim, ¶¶ 14-16.) The magistrate judge in reviewing the complaint recommended dismissal of the complaint on the

basis that these same issues were addressed by Judge Caldwell in his opinion denying the motion to suppress. Therefore, the principles of *res judicata*, collateral estoppel, and issue preclusion bar consideration of the claim in the instant action. (Doc. 5 at p. 2.)

In his objections to the report and recommendation (Doc. 6), Brewer claims that his Fourth Amendment claim against the telephone companies should go forward because these allegations of the violations of the Telecommunications Act are a separate claim from the allegations against the police officers. Nowhere in his complaint does Brewer allege a violation of the Telecommunications Act. The cite used by Brewer in his objections is not a proper cite. Brewer's entire claim is based on a violation of his Fourth Amendment rights, which have been fully addressed in his criminal case.

Thus, the report and recommendation of the magistrate judge will be adopted. An appropriate order will be issued.

s/Sylvia H. Rambo  
United States District Judge

Dated: June 16, 2015.